

JUDGE'S COPY

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UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EPA Region 5 Records Ctr.



262735

ANN MUNIZ and ED MUNIZ, JOSEPH and
DIANE SHROKA, individually
and on behalf of all others similarly situated,

Plaintiffs

v.

REXNORD CORPORATION; AMES SUPPLY CO.;
THE MOREY CORPORATION; SCOT
INCORPORATED; LINDY MANUFACTURING
CO.; PRECISION BRAND PRODUCTS, INC.,
TRICON INDUSTRIES, INC. AND MAGNETROL
INTERNATIONAL, INC.

Defendants.

04C 2405
No. _____

JUDGE JOHN W DARRAH

MAGISTRATE JUDGE LEVIN

CLASS ACTION COMPLAINT

Plaintiffs, Ann and Ed Muniz and Joseph and Diane Shroka, individually, and on behalf
of all others similarly situated, state and allege as follows:

COMMON ALLEGATIONS

Nature of the Action

1. This is a class action brought by and on behalf of the owners and residents of more than 800 homes located in unincorporated DuPage County, Illinois whose drinking water has been contaminated by cancer-causing pollutants dumped by defendants. Plaintiffs have discovered that the drinking water in their homes has been, and continues to be, polluted with unhealthful levels of dangerous chemicals, including trichloroethylene ("TCE") and perchlorethylene ("PCE"), known human carcinogens and mutagens. The defendants generated and dumped these dangerous chemicals, which have commingled in the groundwater and migrated onto Plaintiffs' properties. The Plaintiffs seek, among other things, orders requiring defendants to abate the endangerment to health posed by the contamination, to reimburse

Plaintiffs for the costs they have incurred and will incur in connection with the contamination, and to recover compensatory and punitive damages for their injuries.

Plaintiffs

2. Plaintiffs Ann and Ed Muniz, are citizens of the State of Illinois and reside in unincorporated DuPage County, Illinois. They own the property located at 5617 Pershing with a mailing address of Downers Grove, Illinois.

3. Plaintiffs Joseph and Diane Shroka, are citizens of the State of Illinois and reside in unincorporated DuPage County, Illinois. They own the property located at 5854 Chase with a mailing address of Downers Grove, Illinois.

Defendants

4. Defendant Rexnord Corporation ("Rexnord") is an Illinois corporation that owns, occupies, operates and controls the properties located at 2400 Curtiss Street, 2232 Wisconsin Avenue and 2324 Curtiss Street, Downers Grove, Illinois within the Ellsworth Industrial Park located immediately north of the Class Area. According to the USEPA, Rexnord has been present at its main facility at 2400 Curtiss Street in the Ellsworth Industrial Park for over 40 years, has been present at its facility located at 2324 Curtiss Street since approximately 1981, and has used chlorinated solvents, including TCE and PCE. These chlorinated solvents have been spilled at the site and entered the soil and groundwater. A 2002 report by USEPA found TCE and PCE in the soil and groundwater at the facility.

5. Defendant Ames Supply Co. ("Ames") is an Illinois corporation that owned, occupied, operated and controlled the property located at 2537 Curtiss Street, Downers Grove, Illinois within the Ellsworth Industrial Park located immediately north of the Class Area. from 1962 through 2001. Ames has used chlorinated solvents, including TCE and PCE, since approximately 1986. According to the USEPA, groundwater investigations by Ames in 2000 and 2001 indicate spillage of, among other chemicals, TCE and PCE. A 2002 report by USEPA detected TCE and PCE in the groundwater at the site.

6. Defendant The Morey Corporation ("Morey") is an Illinois corporation that for many years owned, occupied, operated and controlled the property located at 2659 Wisconsin Avenue, Downers Grove, Illinois within the Ellsworth Industrial Park located immediately north of the Class Area. Morey has used TCE, PCE and other hazardous substances over several years at its facility, and has reported a release of hazardous substances, including TCE. Investigations by Morey in 2000 and 2001 showed high levels of TCE, PCE and other hazardous substances in the soil at the facility.

7. Defendant Scot, Incorporated ("Scot") is an Illinois corporation that owns, occupies, operates and controls the property located at 2525 Curtiss Street, Downers Grove, Illinois, within the Ellsworth Industrial Park located immediately north of the Class Area. Scot has operated at its facility for approximately 43 years. According to the USEPA, previous investigations by Scot in 2001 and 2002 indicated high levels of PCE, TCE and other hazardous substances in the soil at the facility. A 2002 report by USEPA indicates that PCE and TCE are present in the soil and PCE and TCE were detected in the groundwater at the facility.

8. Defendant Lindy Manufacturing Co. ("Lindy") is an Illinois corporation that has owned, occupied, operated and controlled the property located at 5200 Katrine Avenue, Downers Grove, Illinois within the Ellsworth Industrial Park located immediately north of the Class Area. According to a 2002 USEPA report, Lindy has used and continues to use chlorinated solvents, including TCE. USEPA also found TCE in the soil and groundwater at the facility.

9. Defendant Precision Brand Products, Inc. ("Precision Brand") is an Illinois corporation that since 1965 has owned, occupied, operated and controlled the property located at 2400 Curtiss Street, Downers Grove, Illinois within the Ellsworth Industrial Park located immediately north of the Class Area. According to USEPA, the facility used TCE from approximately 1970 through 1978 and PCE from 1978 through 1979. A 2002 USEPA report indicates that soil and groundwater samples at the site indicate the presence of TCE and PCE.

10. Defendant Tricon Industries ("Tricon") is an Illinois corporation that has owned, occupied, operated and controlled the properties located at 2325 Curtiss Street and 5000 Chase

Avenue, and occupies, operates and controls the property located at 5400 Janes Avenue in Downers Grove, Illinois within the Ellsworth Industrial Park located immediately north of the Class Area. According to USEPA, Tricon used chlorinated solvents, including TCE, PCE and other hazardous substances over several years, which have spilled into the soil and groundwater. A 2002 USEPA report indicates that high levels of TCE, in addition to PCE, have been detected in the soil at Tricon.

11. Defendant Magnetrol International, Inc. ("Magnetrol") is an Illinois corporation that owns, occupies, operates and controls the property located at 5300 Belmont Road, Downers Grove, Illinois within the Ellsworth Industrial Park located immediately north of the Class Area. Magnetrol has used TCE and other hazardous substances over several years starting at least in 1982 at its facility. According to the USEPA, a previous investigation identified leaking chemicals at the facility.

Jurisdiction and Venue

12. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 as this case arises under the laws of the United States. The claim in Count I seeks relief under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et. seq.* ("CERCLA") and the claim in Count II seeks relief under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et. seq.* ("RCRA").

13. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the state law claims in Counts III through IX, which are so related to the claims in Counts I and II, that they form part of the same case or controversy.

14. Pursuant to 42 U.S.C. § 9613(b), 42 U.S.C. § 6972 and 28 U.S.C. § 1391(1), venue is proper in this Court because this case arises out of actions which occurred and occur, and pertains to property located, within this judicial district.

The Release and Migration of Chlorinated Solvents to Plaintiffs' Homes

15. Each of the defendants has owned or operated facilities which generate or generated, and have dumped, spilled, or otherwise released chlorinated solvents, including TCE and/or PCE, into the soil and groundwater on their properties in the Ellsworth Industrial Park in Downers Grove, Illinois.

16. TCE and/or PCE and other hazardous substances from each of the defendants' properties have commingled and migrated, and continue to migrate, in liquid and vapor form, in a groundwater plume running from defendants' properties toward and into Plaintiffs' properties and other properties in the Class Area (as defined below), contaminating, infiltrating and threatening the soil, groundwater, domestic water supply and indoor air quality of the homes in the area. Plaintiffs and others in the Class Area have been exposed for many years to potentially dangerous levels of these chemicals through ingestion, dermal exposure and inhalation.

17. Beginning in the spring and fall of 2001, the Illinois EPA performed a groundwater investigation just east of I-355 near Downers Grove, in the Class Area. The investigation consisted of three rounds of residential well sampling in the area. Approximately 495 private drinking water wells were sampled and analyzed for volatile organic chemicals. Sample results of more than 84% of the properties revealed elevated levels of PCE, TCE and/or other related VOCs. Over one-half of the samples collected during the first two rounds of sampling contained PCE and/or TCE above the federal safe drinking water standards. Based on these results, USEPA has classified the Ellsworth Industrial Park, including each of the defendants' properties, and the groundwater contamination running from the defendants' properties onto Plaintiffs' properties, as a Superfund site.

18. Due to the test results, in October 2001, the Illinois Department of Health advised that Plaintiffs and others in the Class Area cease using their wells for drinking water or other purposes. The Department of Health warned Plaintiffs and others in the Class Area to use an alternative water source or install a water treatment unit designed to remove volatile organic compounds. Additionally, in mid-2003, in response to the contamination, the DuPage County Board, citing its obligation to protect the health of its residents, declared "all homes in the

[Class] area must be connected to a public water supply" and enacted legislation requiring that all private groundwater wells in the Class Area must be abandoned and sealed.

19. Despite their knowledge of the test results and their use of chlorinated solvents which have caused the drinking water and indoor air quality problems, none of the defendants have taken action to prevent contamination of the groundwater, and none of the defendants have, as of the date of this complaint, fully provided Plaintiffs or others in the Class Area with a permanent source, or even temporary source of safe water to drink and use in their homes. Nor have any defendants taken measures to fully curtail the inhalation risk from the contaminants into the homes of Plaintiffs and others in the Class Area.

20. The releases and spills of hazardous substances from the defendants' properties and the subsequent migration of such substances from defendants' properties to the properties of Plaintiffs and others in the Class Area were a result of defendants' acts or omissions during their ownership and operations, and occurred on a regular basis throughout years of operation.

The Hazardous Nature of PCE and TCE and Other Solvents Spilled and Released by Defendants

21. TCE, PCE and the other volatile organic compounds released by defendants are dangerous substances, which have been linked to a variety of human illnesses, including cancer, and are severely destructive to the environment, including vegetation and wildlife. TCE exposure can cause, among other things, liver and kidney damage and cancers, impaired heart function, impaired fetal development in pregnant women, convulsions, coma and death. PCE exposure can cause, among other things, liver and kidney damage and cancers.

22. The release of these chemicals by defendants presents an imminent and substantial endangerment to both Plaintiffs' health and that of others in the Class Area, and the environment.

The Harm to Plaintiffs Resulting from the Contamination

23. As a result of the contamination, the value of the Plaintiffs' properties and other properties in the Class Area has been substantially decreased, and impaired. This contamination,

even if ultimately remediated, places a stigma upon their properties, which negatively affects the fair market value of their properties.

24. The releases have threatened Plaintiffs' health and others in the Class Area and expose them to injury and the fear of future injury, including increased cancer rate and adversely affected water sources for drinking and domestic use. As a result of the releases and the exposure to Plaintiffs and others in the Class Area to these toxic chemicals, medical monitoring of Plaintiffs and others in the Class Area is necessary to detect the onset of future harm. Additionally, the releases have disrupted their lives on a daily basis, causing considerable stress, inconvenience and discomfort. The releases have left Plaintiffs and others in the Class Area without a reliable water source for drinking and domestic use.

25. Plaintiffs and others in the Class Area have expended time and money to respond to the releases, including, but not limited to, purchasing bottled water and/or filtration systems, buying fans to disperse the contamination, and investigating the nature of release. Additionally, in order to secure an adequate supply of drinking water and prevent exposure to air contamination, Plaintiffs and others in the Class Area have expended or will have to expend large amounts of money to connect to Lake Michigan water, and shield their homes from airborne contamination.

Class Allegations

26. Plaintiffs bring each of the claims in this action in their own names and on behalf of a class of all persons similarly situated ("the Class"), pursuant to Rule 23 of the Federal Rules of Civil Procedure.

27. The Class consists of those persons who currently, or in the past, own(ed) or reside(d), on property that has been impacted, or a threat exists that it will be impacted, by chlorinated solvents released at or from the named defendants' properties in the Ellsworth Industrial Park. This area is located directly south of the Ellsworth Industrial Park and the approximate boundaries of the class properties are Inverness to the north, 63rd Street to the

south, Plymouth Street to the east, and Interstate 355 to the west (the "Class Area"). A map depicting the Class Area is attached as Exhibit 1.

28. The Class is so numerous that joinder of all members is impractical. The number of homes in the affected area, which have been or may in the future be damaged by hazardous substances, exceeds 800, and, therefore, the number of Class members also exceeds 800 people, and likely includes in excess of 2000 people.

29. There are common questions of law and fact that affect the rights of each member of the Class, and the types of relief sought are common to the entire Class. The same conduct by each defendant has injured each member of the Class. The Class members are all impacted by groundwater contamination caused by defendants, which is the predominant question in this matter. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

30. Plaintiffs' claims are typical of the claims of the Class. All are based upon the same factual and legal theories. It is the same conduct by each defendant that has injured each member of the Class.

31. The principal issue in this matter involves defendants' conduct in disposing and releasing hazardous substances and wastes into groundwater which impacts numerous property owners in the Class. The prosecution of separate actions by individual members of the Class would potentially result in inconsistent or varying adjudications with respect to individual members of the Class. Prosecution of separate actions would establish incompatible standards of conduct for defendants, which would be dispositive of the interests of other members not parties to the adjudications, and substantially impair or impede other member's ability to protect their interests.

32. Defendants' actions which have contaminated the same groundwater source used by numerous property owners in the Class Area makes final injunctive relief with respect to the Class appropriate.

33. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

34. Plaintiffs have retained counsel who are competent and experienced to represent the class of plaintiffs.

COUNT I

CERCLA COST RECOVERY, 42 U.S.C. § 9607(a)

35. Plaintiffs, individually and on behalf of the Class defined herein, repeat and reallege and incorporate by reference paragraphs 1 through 34 as paragraph 35 of this Count I, as though fully set forth herein.

36. Each defendant is a "person" as defined by § 101(21) CERCLA, 42 U.S.C. § 9601(21).

37. Each of the defendants were and/or continue to be owners and/or "operators" of a "facility" and a portion of a "facility," within the meaning of §§ 101(2), 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(20), 9601(9), 9607(a). The "facilities" include each of defendants' properties and the USEPA Superfund site, which includes the groundwater plume running from the Ellsworth Industrial Park onto Plaintiffs' and the Class' properties.

38. The substances, including PCE and TCE, used or stored at each of the defendants' facilities were and are "hazardous substances," within the meaning of § 101(14) of CERCLA, 42 U.S.C. § 9601(14).

39. There have been and continue to be "releases" or "threatened releases" of hazardous substances into the environment at each of defendants' facilities and at the USEPA Superfund site, within the meaning of §§ 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9607(a). The hazardous substances released include, but are not limited to, PCE and TCE.

40. Defendants' releases have migrated towards and into Plaintiffs' properties, including Plaintiffs' water supply and the air Plaintiffs breathe. Plaintiffs have not contaminated any facility in any way.

41. Defendants are liable under § 107 of CERCLA, 42 U.S.C. § 9607(a), because they generated and disposed of hazardous substances, including PCE and/or TCE, they are the current or former operators of a facility, and because they owned or operated a facility when hazardous substances were stored, used, disposed, or otherwise discharged thereon.

42. As a result of the releases or threatened releases of hazardous substances, Plaintiffs and the Class have incurred and continue to incur "response" costs within the meaning of §§ 101(23)-(25) of CERCLA, 42 U.S.C. §§ 9601(23)-(25), including, but not limited to, the retention of an environmental consultant to perform preliminary investigations of the contamination of Plaintiffs' and the Class' property, as well the cost of alternative water sources. All such costs are necessary costs of response, and, to the extent required, consistent with the National Contingency Plan. Plaintiffs and the Class will continue to incur such response costs in the future. Plaintiffs and the Class are entitled to full reimbursement from defendants for all such costs, pursuant to § 107(a) of CERCLA, 42 U.S.C. § 9607(a).

COUNT II

RCRA § 6972(a)(1)(B)

43. Plaintiffs, individually and on behalf of the Class defined herein, repeat and reallege and incorporate by reference paragraphs 1 through 42 of the Common Allegations as paragraph 43 of this Count II, as though fully set forth herein.

44. Each defendant is a "person" as defined in § 6903(15) of RCRA.

45. TCE, PCE and other solvents released from each of the defendants' property and the resulting contaminated media are solid wastes or hazardous wastes as defined in §§ 6903(5) and (27) of RCRA.

46. Defendants have engaged in the handling, storage, treatment, transportation or disposal of solid wastes or hazardous wastes in a manner which has contributed to and is contributing to the contamination of defendants' properties and Plaintiffs' and the Class' properties. Specifically, the defendants' handling and storage of TCE and/or PCE and other solvents and the leaking of such products into the environment, constituting improper disposal of

solid or hazardous wastes, have and continue to present an imminent and substantial endangerment to health and the environment by polluting or threatening to pollute the groundwater and air at, in, on, beneath and around the defendants' and Plaintiffs' properties at the USEPA Superfund site. As contributors to this hazardous condition, defendants are liable pursuant to § 6972(a)(1)(B) of RCRA.

47. In accordance with § 6972(b) and 40 C.F.R. 254, Plaintiffs sent a letter by registered mail, return receipt requested, dated September 26, 2002, to defendants providing them with prior notice of the violations alleged and the claims made in this Court. A copy of one of these letters is attached as Exhibit 2. Copies of the notice were also sent in like manner to the Administrator of the USEPA, the Attorney General of the United States, the Regional Administrator for Region V of the USEPA, and the Director of the Illinois Environmental Protection Agency in accordance with 40 C.F.R. 254. The defendants received these letters more than 90 days prior to the filing of this Complaint. Neither the Administrator of the USEPA nor the State of Illinois have commenced any action against the defendants that fully addresses the endangerment, including any action of the type specifically delineated and described under § 6972(b)(2)(B) of RCRA, that fully addresses the imminent and substantial endangerment to health or the environment. For instance, in order to obtain Lake Michigan water, Plaintiffs and others in the Class Area must pay a \$2,000 connection charge that is not covered by any action, including any action specifically delineated and described under § 6972(b)(2)(B) of RCRA. Plaintiffs and others in the Class Area continue to be threatened by airborne contaminants moving from the groundwater into their homes, which is not covered by any action, including any action specifically delineated and described under § 6972(b)(2)(B) of RCRA.

48. Pursuant to RCRA § 6972(b)(2)(F), Plaintiffs will serve a copy of this Complaint on the Attorney General of the United States and the Administrator of the USEPA.

49. This Court has jurisdiction pursuant to § 6972(a) of RCRA to order the defendants to take all actions necessary to abate the imminent and substantial endangerment to Plaintiffs' health or the environment and to impose any appropriate civil penalties.

COUNT III

NUISANCE

50. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 49 of the Common Allegations as paragraph 50 of this Count III, as though fully set forth herein.

51. The contamination of the soils and groundwater at, in, on or beneath properties, and residential properties adjacent to and in the area of said properties occurred and persists because of all defendants' acts and omissions including, but not limited to, their operation and maintenance of their facility and equipment; their handling, storage, use and disposal of hazardous substances; and/or their failure to promptly and effectively address such contamination to prevent further migration of the contaminants.

52. Defendants' contamination of the soils and groundwater and their failure to address such contamination constitutes an unreasonable, unwarranted and unlawful use of the properties and substantially interferes with Plaintiffs' and the Class' reasonable use, development and enjoyment of their properties.

53. As alleged above, Plaintiffs and the Class have incurred substantial damage as a result of defendants' creation and maintenance of such contamination, constituting a nuisance.

COUNT IV

TRESPASS

54. Plaintiffs, individually and on behalf of the Class defined herein, repeat and reallege and incorporate by reference paragraphs 1 through 53 of the Common Allegations as paragraph 54 of this Count IV, as though fully set forth herein.

55. Each defendant had and has a duty not to permit or allow hazardous substances transported to, used or stored at their property to invade adjacent residential properties. Defendants also had a duty not to allow the continuance of this wrongful trespass. Defendants have breached these duties by their wrongful acts and omissions resulting in the contamination and failure to take action to prevent further migration of the contamination.

56. Defendants' wrongful acts and omissions have resulted in releases of contaminants from their properties into the environment, and the migration of such contaminants at, in, on or beneath other properties in the area, without consent of the Plaintiffs or Class members.

57. The invasion of the adjacent real property exclusively possessed by Plaintiffs and the Class, by contamination released by Defendants, was due to unreasonable, unwarranted, and unlawful conduct of defendants and constitutes a wrongful trespass upon the land owned by Plaintiffs and Class members.

58. As a result of defendants' wrongful trespass, the lawful rights of Plaintiffs' and the Class to use and enjoy their properties have been substantially interfered with, and Plaintiffs and the Class have been damaged.

COUNT V

ULTRAHAZARDOUS ACTIVITY - STRICT LIABILITY

59. Plaintiffs, individually and on behalf of the Class defined herein, repeat and reallege and incorporate by reference paragraphs 1 through 58 of the Common Allegations as paragraph 59 of this Count V, as though fully set forth herein.

60. The defendants' generation and disposal of solid and hazardous substances at their facilities and operation of their facilities using solid and hazardous substances in a densely populated area of DuPage County close to private drinking water wells, are ultrahazardous activities.

61. As a direct result of the defendants' engaging in the aforementioned ultrahazardous activities, TCE, PCE and other hazardous chemicals have been released from defendants' facilities into the groundwater used by Plaintiffs and the Class.

62. As a direct or proximate result of the defendants' engaging in the aforementioned ultrahazardous activities, the Plaintiffs and the Class have suffered substantial damages.

COUNT VI

RES IPSA LOQUITUR

63. Plaintiffs, individually and on behalf of the Class defined herein, repeat and reallege and incorporate by reference paragraphs 1 through 62 of the Common Allegations as paragraph 63 of this Count VI, as though fully set forth herein.

64. As generators of solid wastes and hazardous substances at the Superfund site, and operators of their facilities, the defendants owed a duty to Plaintiffs to prevent the release of TCE, PCE and other hazardous chemicals into the groundwater used by Plaintiffs.

65. If ordinary care is used, TCE, PCE and other hazardous chemicals would not be released from defendants' facilities into the groundwater used by Plaintiffs.

66. The release of TCE, PCE and other hazardous chemicals would not have occurred but for the negligent acts or omissions of the defendants.

67. As a direct or proximate result of these negligent acts or omissions, the Plaintiffs and the Class have suffered substantial damages.

COUNT VII

NEGLIGENCE

68. Plaintiffs, individually and on behalf of the Class defined herein, repeat and reallege and incorporate by reference paragraphs 1 through 67 of the Common Allegations as paragraph 68 of this Count VII, as though fully set forth herein.

69. Defendants had a duty to Plaintiffs and the Class not to permit or allow hazardous substances at the properties to invade adjacent residential properties. Defendants also had a duty to promptly respond to any releases of contaminants in a manner which would prevent further migration of the contaminants, and to warn plaintiffs of the release or threatened release of TCE, PCE and other hazardous substances into or towards the groundwater used by Plaintiffs.

70. Upon information and belief, defendants have breached these duties by their negligent acts and omissions in operating and maintaining their facility; maintaining their equipment; installing their equipment; their handling, storage, use and disposal of hazardous

substances; their failure to promptly and effectively address such contamination to prevent further migration of the contaminants; and their failure to warn Plaintiffs of the release of threatened release.

71. Defendants' breach of their duties to Plaintiffs and the Class have caused substantial injury and damage to Plaintiffs and the Class.

COUNT VIII

NEGLIGENCE BASED ON STATUTORY VIOLATION

72. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 71 of the Common Allegations as paragraph 72 of this Count VIII, as though fully set herein.

73. Defendants, by their actions set forth herein, have caused or threatened or allowed the discharge of contaminants into the environment so as to cause water pollution in violation of § 12(a) of the Illinois Environmental Protection Act, 415 ILCS 5/12(a). The Illinois Attorney General itself has alleged that several defendants violated 415 ILCS 5/12(a). Section 12(a) was designed to protect human health and life of persons such as Plaintiffs and the Class who drink the water.

74. Defendants, by their actions set forth herein, have deposited contaminants upon the land in such place and manner as to cause a water pollution hazard in violation of § 12(d) of the Illinois Environmental Protection Act, 415 ILCS 5/12(d). The Illinois Attorney General itself has alleged that several defendants violated 415 ILCS 5/12(d). Section 12(d) was designed to protect human health and life of such persons as Plaintiffs and the Class who drink, and are otherwise exposed to, the water. Plaintiffs' injuries, as alleged herein, including exposure to contaminated water, are the types of injuries that the Environmental Protection Act is designed to protect against.

75. As a result of the violations alleged herein, defendants' actions in causing and threatening water pollution and causing a water pollution hazard, defendants' actions constitute prima facie negligence.

76. As a direct or proximate result of these violations, defendants have caused substantial injury and damage to Plaintiffs and the Class.

COUNT IX

WILLFUL AND WANTON MISCONDUCT

77. Plaintiffs, individually and on behalf of the Class defined herein, repeat and reallege and incorporate by reference paragraphs 1 through 76 of the Common Allegations as paragraph 77 of this Count IX, as though fully set forth herein.

78. Upon information and belief, defendants have acted in a wanton and willful manner and in reckless indifference to the safety of Plaintiffs' health and property, and to the safety of the general public, in one or more of the following ways:

(a) Defendants allowed and caused hazardous chlorinated solvents to routinely and frequently spill onto the ground over the course of over several years without appropriate safeguards to prevent or remedy such releases; and

(b) Defendants have failed to determine the impact of the contamination on their property on the private water wells used by Plaintiffs and members of the Class, when defendants knew or should have known of the likelihood that these private wells were contaminated.

79. As a direct and proximate result of the willful, wanton and reckless acts and/or omissions of all defendants, Plaintiffs and the Class have sustained substantial damages.

Relief Requested

WHEREFORE, Plaintiffs request that this Court judgment in their favor and in favor of Plaintiffs and the Class and against defendants, and pray:

A. that the Court certify Plaintiffs' action as a Class action on behalf of all others similarly situated, appoint Plaintiffs' counsel as counsel for the Class, and order that Notice be given to the Class of this action;

B. that the Court require the defendants to take all measures to abate the imminent and substantial endangerment to health and the environment as contemplated by RCRA § 6972.

including, but not limited to, paying the full costs for plaintiffs and members of the Class to be connected to Lake Michigan water, and testing and shielding the homes of Plaintiffs and members of the Class from airborne contaminants;

C. that the Court enter judgment against defendants jointly and severally for all response costs incurred by Plaintiffs and others in the Class Area under CERCLA, including, but not limited to, costs of investigation, costs of connecting to Lake Michigan water, bottled water costs, and costs of fans and filtration systems, and declare that defendants are liable for all response costs to be incurred by Plaintiffs and others in the Class area under CERCLA.

D. that the Court award damages incurred by Plaintiffs and others in the Class Area against defendants jointly and severally under Counts III through IX for all damages, including, but not limited to, out of pocket damages, temporary loss of value of property, discomfort, aggravation and annoyance and permanent loss of value of property.

E. that the Court award punitive damages against defendants jointly and severally under Count IX.

F. that the Court enter an order creating a court supervised and defendant-funded fund to pay for medical monitoring for Plaintiffs and others in the Class Area.

G. that the Court order expedited discovery to determine the nature, extent and full scope of the contamination;

H. that the Court preliminarily and permanently enjoin defendants from further spillage or release of hazardous chlorinated solvents on properties;

I. that the Court award Plaintiffs their costs of litigation (including reasonable attorneys' and expert witness fees), as authorized by RCRA § 6972(e); and

J. that the Court award Plaintiffs and the Class their costs of suit and such other and further relief as the Court deems just and proper.

Plaintiffs request trial by jury on all issues so triable.

Dated: April 2, 2004

Respectfully submitted,

By: 

One of Their Attorneys

Myron M. Cherry
Myron M. Cherry & Associates. L.L.C.
30 North LaSalle St., Suite 2300
Chicago, Illinois 60602
312-372-2100

James D. Brusslan
Levenfeld Pearlstein, L.L.C.
2 North LaSalle St., Suite 1300
Chicago, Illinois 60602
312-476-7570

Bill Robins III
David Sandoval
J. Christopher Dean
William T. Jones
Heard, Robins, Cloud, Lubel & Greenwood, L.L.P.
910 Travis Street, Suite 2020
Houston, TX. 77002
713-650-1200

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